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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 FREEMAN ALLEN FELDER,

12 Plaintiff,

13 v.

14 H. MACIAS, et al.,

15 Defendants.
16

No. 2:20-CV-0266-WBS-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42
18 U.S.C. § 1983. Pending before the Court is Plaintiff's motion for the appointment of counsel,
19 ECF No. 58.

20 The United States Supreme Court has ruled that district courts lack authority to
21 require counsel to represent indigent prisoners in § 1983 cases. See Mallard v. United States Dist.
22 Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the Court may request the
23 voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). See Terrell v. Brewer, 935
24 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990).
25 A finding of "exceptional circumstances" requires an evaluation of both the likelihood of success
26 on the merits and the ability of the plaintiff to articulate his claims on his own in light of the
27 complexity of the legal issues involved. See Terrell, 935 F.2d at 1017. Neither factor is
28 dispositive and both must be viewed together before reaching a decision. See id. In Terrell, the

1 Ninth Circuit concluded the district court did not abuse its discretion with respect to appointment
2 of counsel because:

3 . . . Terrell demonstrated sufficient writing ability and legal knowledge to
4 articulate his claim. The facts he alleged and the issues he raised were not
5 of substantial complexity. The compelling evidence against Terrell made it
6 extremely unlikely that he would succeed on the merits.

7 Id. at 1017.

8 In the present case, the Court does not at this time find the required exceptional
9 circumstances. In his motion, Plaintiff states that he is indigent, the issues involved in this case
10 are complex, he has limited law library access, and he has been unable to retain new counsel after
11 former retained counsel withdrew. These are not exceptional circumstances. A review of the
12 docket reflects that, when Plaintiff has been proceeding pro se in this case, he has been able to
13 articulate his claims on his own. Further, contrary to Plaintiff's assertion that the case involved
14 medical deliberate indifference and will likely require expert testimony, Plaintiff's claims involve
15 the alleged use of excessive force. Such claims are typically neither factually nor legally
16 complex. Finally, Plaintiff has not established a likelihood of success on the merits. To that
17 point, the Court notes that Defendants' motion for summary judgment remains pending and
18 Plaintiff has not yet filed a substantive opposition to that motion.

19 As to the pending motion for summary judgment, Plaintiff filed a pro se response
20 on January 11, 2024, stating that he cannot substantively respond because former retained counsel
21 never provided Plaintiff a copy of Defendants' motion or the discovery produced by Defendants.
22 In response to Plaintiff's filing, Defendants re-served Plaintiff a copy of their motion for
23 summary judgment. See ECF No. 57. Defendants also do not oppose a further extension of time
24 for Plaintiff to file a substantive pro se opposition to their motion for summary judgment. See
25 ECF No. 59. Good cause appearing therefor, the Court will grant Plaintiff an extension of time to
26 file a pro se opposition.

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Accordingly, IT IS HEREBY ORDERED as follows:

1. Plaintiff's request for the appointment of counsel, ECF No. 58, is denied.
2. Plaintiff is granted an extension of time to file a substantive pro se opposition to Defendants' motion for summary judgment.
3. Plaintiff's opposition is due within 45 days of the date of this order.

Dated: March 4, 2024



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE